STATE OF ALASKA
MATRONA JOHNSON

IBLA 81-646 Decided February 22, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management partially rejecting State selection application AA-6854.

Affirmed.

1. Alaska: Native Allotments

> An Alaska Native allotment application qualifies for approval under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), where it was pending before the Department on or before Dec. 18, 1971, and described unreserved land. Subsection (a)(4) of that section requiring adjudication of such application pursuant to the Alaska Native Allotment Act, 43 U.S.C. § 270-1 through 270-3 (1970) if the land in the application is included in a state selection, does not apply where the state selection was not filed on or before December 18, 1971.

APPEARANCES: Wilson L. Condon, Esq., Attorney General, Barbara J. Miracle, Esq., Assistant Attorney General, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The State of Alaska has appealed from a decision dated March 6, 1981, by the Alaska State Office, Bureau of Land Management (BLM), affirming Native allotment AA-7811 of Matrona Johnson, and rejecting in part State selection AA-6854.

The Native allotment application of Matrona Johnson was filed with BLM on April 17, 1972. The application is signed and dated February 3, 1971, and was received by BLM from the Bureau of Indian Affairs (BIA). By section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) 1976, the Department is authorized to approve only Native allotment applications which

were pending before the Department on December 18, 1971, the date of that Act. The deadline is met where the application was on file with BIA on December 18, 1971. See Nora L. Sanford (On Reconsideration), 63 IBLA 335, 337 (1982). The application (according to the field report) was for approximately 160 acres in secs. 29 and 32 of T. 4 N., R 46 W., Seward meridian. It was filed pursuant to the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). The applicant claimed use and occupancy from May 1943.

The State of Alaska's selection application was filed on January 21, 1972. By decision dated June 13, 1975, BLM tentatively approved Alaska's selection for all the lands in T. 4 N., R. 46 W., but specifically excluded allotment application AA-7811.

By decision dated July 11, 1979, BLM held AA-7811 for approval and rejected the State selection AA-6854 insofar as it conflicted with AA-7811. That decision stated in part:

> Based on the field report and the additional information submitted by Ms. Johnson, it has been determined that she has used the land for which she applied in such a manner as to satisfy the substantial use and occupancy requirements of the Native Allotment Act, and the approximate 160 acres situated in Secs. 29 and 32 of T. 4 N., R. 46 W., Seward Meridian, are therefore held for approval to Ms. Matrona Johnson. Survey of the area will be ordered when this decision becomes final.

BLM's field examination was made on June 8, 1974. It states that no improvements were found. It concluded that the substantial use and occupancy criterion had not been met. The additional information mentioned in the decision apparently consists of witness statements alleging that the applicant used the land for berrypicking, fishing, and woodcutting. A campsite and tentframe also are mentioned.

When the State of Alaska appealed the July 11 decision, the Board, by order of November 15, 1979, remanded the case to the State Office to allow the State of Alaska to file a contest complaint against the Native allotment. The order of remand stated that failure to file such complaint would result in reinstatement of the appeal, then to be decided by the Board on it merits. By letter dated December 18, 1979, Alaska advised BLM that it did not intend to initiate proceedings. Therefore, BLM issued the decision on appeal herein, in which it finally approved Native allotment application AA-7811 and finally rejected in part State selection application AA-6854.

On appeal the State of Alaska contends, citing, inter alia, John Nusunginya, 28 IBLA 83 (1976), that the Native's use and occupancy of the land was insufficient to support approval of the application and that its prior filed selection application should prevail.

[1] Section 905(a)(1) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), approved all Native allotment applications pending before the Department on or before December 18, 1971, which described either land that was unreserved on

December 13, 1968, or land within the National Petroleum Reserve in Alaska subject to valid existing rights, except where otherwise provided by other subsections of that section. Subsection 905(a)(4), addresses the adjudication of Native allotment applications which conflict with State selection applications. That subsection provides in pertinent part:

> Where an allotment application describes land * * * which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the State of Alaska pursuant to the Alaska Statehood Act and was not withdrawn pursuant to section 11(a)(1)(A) of the Alaska Native Claims Settlement Act from those lands made available for selection by section 11(a)(2) of the Act by any Native Village certified as eligible pursuant to section 11(b) of such Act [i.e., a "core" township selection by an eligible Native village 1/], paragraph (1) of this subsection and subsection (d) of this section shall not apply and the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

43 U.S.C. § 1634(a)(4) (Supp. IV 1980).

The Senate report explains this provision as follows:

> [E]xcluded from the general approval (under subsection 905(a)(1)] are applied-for allotments which describe lands selected by or tentatively approved to the State of Alaska on or before December 18, 1971. Applications for allotments in "core" townships of villages certified as eligible for land selections under Sections 11(b) of the Alaska Native Claims Settlement Act are, however, subject to the statutory approval contained in subsection (a)(1) notwithstanding a State selection or tentative approval of such core township lands prior to December 18, 1971. [Emphasis supplied.]

S. Rep. No. 413, 96th Cong., 2nd Sess. 285, reprinted in 1981 U.S. Code Cong. & Ad. News 9130, 9289.

Section 905 (a)(4) of the Alaska National Interest Lands Conservation Act (Act), requires adjudication pursuant to the Alaska Native Allotment Act rather than confirmation of title under section 905(a)(1) where the land in the Native allotment application describes land which was validly selected by the State of Alaska. Subsection 905(a)(1), requires that the land applied for by the Native applicant should have been unreserved on December 13, 1968.

In the case before us it appears that the Native allotment application was filed as of December 18, 1971, and therefore preceded the filing in

1/ Section 11(a)(1)(A) of ANCSA, 43 U.S.C. § 1610(a)(1)(A) (1976), withdrew "the lands in each township that encloses all or part of any Native village identified pursuant to subsection (b) of this section."

January 1972 of the State's selection application. Consequently, the allotment application could not have described land which was validly selected earlier by the State of Alaska. Therefore, no adjudication pursuant to the Alaska Native Allotment Act is required. See Roselyn Isaac (On Reconsideration), 53 IBLA 306 (1981). Moreover, there is no indication that the land described in the allotment application failed to meet the other prerequisites of section 905(a)(1) of the Act. We conclude that Native allotment application AA-7811 qualified for approval pursuant to that section and was properly finally approved in the BLM decision of March 6, 1981.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge